

AMENDING VETERANS REGULATIONS TO ESTABLISH FOR PERSONS WHO SERVED IN THE ARMED FORCES DURING WORLD WAR II A FURTHER PRESUMPTION OF SERVICE-CONNECTION FOR ACTIVE PULMONARY TUBERCULOSIS

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MAY 25 (legislative day, MARCH 29), 1950.—Ordered to be printed

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Mr. GEORGE, from the Committee on Finance, submitted the following

## REPORT

[To accompany H. R. 7440]

The Committee on Finance, to whom was referred the bill (H. R. 7440) to amend Veterans Regulations to establish for persons who served in the armed forces during World War II a further presumption of service-connection for active pulmonary tuberculosis, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

### EXPLANATION OF THE BILL

This bill amends Veterans Regulations to provide a rebuttable presumption of service connection in the case of veterans who develop a compensable degree of active pulmonary tuberculosis within 3 years from the date of separation from active service.

While the bill would affect chiefly World War II veterans, it would also apply to veterans of the Spanish-American War and World War I, who come within the purview of Public, No. 2, Seventy-third Congress, and Veterans Regulations.

The present law provides a presumption of service connection with respect to chronic disease generally if such disease is found to exist within 1 year of the date of discharge. Veterans' Administration regulations provide further in connection with active pulmonary tuberculosis that if such disease is diagnosed within the second year, it will be held to have existed 6 months prior to that date in minimal cases, 9 months in moderately advanced cases, and 12 months in far advanced cases.

A presumptive period for World War I veterans for service-connected active tuberculosis extended from their discharge to January 1, 1925, by virtue of the World War Veterans' Act, 1924, as amended. Such period, it will be noted, is considerably longer than the period

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proposed by this legislation, which is directed primarily to World War II cases.

The committee is of the opinion that this bill is fully justified, in view of the nature of this particular chronic disease. This additional presumptive period will authorize service connection in many meritorious cases which are barred under existing law. The entitlement to compensation and preference in hospitalization generally resulting will lessen the need of veterans to engage in labor injurious to their health, encourage them to take proper measures for recovery, and thus result in improving the health of the Nation generally. The presumption is, of course, rebuttable where there is affirmative evidence to the contrary.

There is no estimate of cost that can be made, inasmuch as the Veterans' Administration has no data with respect to the number of cases that might be added to the rolls by enactment of the bill. Approved by the American Legion, Veterans of Foreign Wars, Disabled American Veterans, and American Veterans of World War II.

The report of the Veterans' Administration on a similar bill, forwarded to the House Veterans' Affairs Committee, and contained in their report on the bill, is as follows:

VETERANS' ADMINISTRATION,  
Washington 25, D. C., February 23, 1950.

Hon. JOHN E. RANKIN,  
*Chairman, Committee on Veterans' Affairs,  
House of Representatives, Washington, D. C.*

DEAR MR. RANKIN: Reference is made to the informal request of February 17, 1950, for a report by the Veterans' Administration on H. R. 4492, Eighty-first Congress, a bill to establish for individuals who served in the Armed Forces during World War II a presumption of service-connected disability in the case of tuberculosis existing within 3 years after discharge from such forces.

The purpose of the bill is to provide that in the administration of all laws and regulations granting rights, benefits, and privileges to individuals who served in the military or naval forces of the United States after December 6, 1941, and prior to January 1, 1947, and to their widows, children, and dependent parents, tuberculosis existing at any time within 3 years after discharge or release from active service shall be presumed to have been incurred in, or aggravated, by such service. This presumption could be rebutted only by clear and convincing evidence to the contrary.

The proposed measure would confer service connection in cases of both pulmonary and nonpulmonary tuberculosis first noted near the end of the third year after discharge, without distinction as to length or type of service of the veteran, or as to the degree of seriousness of his tuberculosis, and without specifying whether the requirement for eligibility is active or inactive tuberculosis. This presumption, if enacted, would be more inclusive than the presumption contained in the World War Veterans' Act, 1924, as amended, which extends only to active tuberculosis developing a 10 percent degree of disability or more. It is not at all uncommon to find a condition of inactive (arrested) pulmonary tuberculosis, in service, or within any specified period thereafter, with no history of previous disabling illness. It is not the practice to grant service connection for inactive tuberculosis noted during service unless preceded by active tuberculosis demonstrated in such service, except under very exceptional circumstances, and it would be anomalous to grant service connection for the same condition after discharge.

Veterans of World War II are entitled to benefits provided under the Veterans Regulations promulgated pursuant to Public, No. 2, Seventy-third Congress, March 20, 1933, as amended. Under subparagraph (c), paragraph 1, part 1 of Veterans Regulation No. 1 (a), as amended by Public Law 748, Eightieth Congress, June 24, 1948, a rebuttable presumption of service connection is provided for certain chronic and tropical diseases named therein and such other chronic diseases as the Administrator of Veterans' Affairs may add. To be entitled to the presumption, the diseases must become manifest to a degree of 10 percent or more within 1 year after separation from active service, provided

the disabled person served 90 days or more, and subject to other provisions of the governing regulations. This presumption of service connection is rebuttable by clear and unmistakable evidence that the disability had its inception prior or subsequent to active service.

For the purposes of determining the existence of a compensable degree of active tuberculosis within 1 year of discharge, or the date prior to which a disability must have been incurred as provided in Veterans Regulation No. 1 (a), as amended, whichever is the earlier, active pulmonary tuberculosis diagnosed by approved methods during the second year is held to have preexisted the diagnosis 6 months in minimal (incipient) cases; 9 months in moderately advanced cases; and 12 months in far-advanced cases.

Furthermore, veterans of World War II are entitled to the presumption of soundness at enlistment afforded by section 9 (b) of Public Law 144, Seventy-eighth Congress, approved July 13, 1943, which amended paragraph I (b), part I, Veterans Regulation No. 1 (a), as amended, to read as follows:

"(b) For the purposes of paragraph I (a) hereof every person employed in the active military or naval service shall be taken to have been in sound condition when examined, accepted, and enrolled for service except as to defects, infirmities, or disorders noted at time of the examination, acceptance, and enrollment, or where clear and unmistakable evidence demonstrates that the injury or disease existed prior to acceptance and enrollment and was not aggravated by such active military or naval service."

With further reference to the need for the proposed legislation, in addition to the presently available presumptions, it is pertinent to point out that the facilities and procedures of the service departments in the examination of recruits prior to their induction into service and their facilities for rendering medical care and treatment, the maintenance of records in individual cases and the furnishing of these records to the Veterans' Administration all represent a great advancement and improvement over comparable situations as they existed during World War I.

In accordance with the policy indicated by Public Law 361, Seventy-seventh Congress, approved December 20, 1941, and the policy established by the Veterans' Administration pertaining to service connection of disabilities, consideration is given to the places, types, and circumstances of service of the veteran as shown by his service records, the official history of each organization in which he served, his medical records and all pertinent medical and lay evidence to the end that all reasonable doubts are resolved in his favor. Any veteran dissatisfied with the adjudication of his claim is given ample opportunity to appeal to the Board of Veterans' Appeals under the provisions of part II of Veterans Regulation No. 2 (a), as amended. Moreover, the advances in medical science since World War I have facilitated the detection and diagnosis of diseases to such an extent that further extension of statutory presumptions of service connection is not believed to be indicated.

A statutory provision which requires a finding of service connection for a disability which cannot be shown to be due to service is inconsistent with the theory of providing compensation for disability or death resulting from injury or disease incurred in line of duty in active military or naval service, and results in providing compensation for disability or death due to causes which are not in any way connected with military or naval service.

There are no available data on which to base an estimate of the cost of H. R. 4492, Eighty-first Congress, if enacted.

Advice has been received from the Bureau of the Budget that the enactment of the proposed legislation would not be in accord with the program of the President.

Sincerely yours,

CARL R. GRAY, Jr., *Administrator.*

#### CHANGES IN LAW

In accordance with the provisions of Senate Resolution 95, Eighty-first Congress, the changes made in existing law by the bill are shown as follows (existing law proposed to be omitted is in black brackets; new matter is in italics; existing law in which no changes are proposed is shown in roman):

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##### SUBPARAGRAPH (c) OF PARAGRAPH I, PART I, VETERANS REGULATION No. 1 (A), AS AMENDED

That for the purposes of paragraph 1 (a) hereof a chronic disease becoming manifest to a degree of 10 percent or more within one year from the date of separation from active service as set forth therein shall be considered to have been incurred in or aggravated by service as specified therein notwithstanding there is no record of evidence of such disease during the period of active service: *Provided*, The person suffering from such disease served 90 days or more in the active service as specified therein: *Provided, however*, That where there is affirmative evidence to the contrary, or evidence to establish that an intercurrent injury or disease which is a recognized cause of such chronic disease, has been suffered between the date of discharge and the onset of the chronic disease, or the disability is due to the person's own misconduct, service connection will not be in order: *Provided further*, That the term "chronic disease" as used in this paragraph shall include anemia, primary; arteriosclerosis; arthritis, bronchiectasis; calculi of the kidney, bladder, or gall bladder; cardiovascular-renal disease, including hypertension, myocarditis, Buerger's disease and Raynaud's disease; cirrhosis of the liver; coccidiomycosis; endocarditis; diabetes, mellitus; endocrinopathies; epilepsies; Hodgkin's disease; leukemia, nephritis; osteitis, deformans; osteomalacia; organic diseases of the nervous system, including tumors of the brain, cord, or peripheral nerves; encephalitis lethargica residuals; scleroderma; tuberculosis, active (*other than pulmonary*); tumors, malignant; ulcers, peptic (gastric or duodenal) and such other chronic diseases as the Administrator of Veterans' Affairs may add to this list: *Provided further*, That active pulmonary tuberculosis developing a 10 per centum degree of disability or more within three years from the date of separation from active service, shall, in the absence of affirmative evidence to the contrary, be deemed to have been incurred in or aggravated by active service: *And provided further*, That, subject to the limitations of this subparagraph, tropical diseases, such as cholera; dysentery; filariasis; leishmaniasis; leprosy; loiasis; malaria; black water fever; onchocerciasis; oroya fever; dracontiasis; pinta; plague; schistosomiasis; yaws; yellow fever and others and the resultant disorders or diseases originating because of therapy, administered in connection with such diseases, or as a preventative thereof, shall be accorded service connection when shown to exist within one year after separation from active service or at a time when standard and accepted treatises indicate that the incubation period thereof commenced during active service. Nothing in this paragraph shall be construed to prevent service connection for any disease or disorder otherwise shown by sound judgment to have been incurred in or aggravated by active service.

